

## CHAPTER 646

### RECOVERY OF REAL PROPERTY

Referred to in [§29A.101](#)

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#### **646.1 Ordinary proceedings — joinder — counterclaim.**

Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein, except of like proceedings, and as provided in [this chapter](#).

[R60, §4177; C73, §3245; C97, §4182; C24, 27, 31, 35, 39, §12230; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.1]

#### **646.2 Parties.**

Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord, or tenant of the property claimed.

[C51, §2002; R60, §3569; C73, §3246; C97, §4183; C24, 27, 31, 35, 39, §12231; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.2]

#### **646.3 Title.**

The plaintiff must recover on the strength of the plaintiff's own title.

[C51, §2020; R60, §3591; C73, §3247; C97, §4184; C24, 27, 31, 35, 39, §12232; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.3]

#### **646.4 Tenant in common.**

In an action by a tenant in common or joint tenant of real property against the cotenant, the plaintiff must show, in addition to the plaintiff's evidence of right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

[C51, §2027; R60, §3605; C73, §3248; C97, §4185; C24, 27, 31, 35, 39, §12233; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.4]

#### **646.5 Service on agent.**

When the defendant is a nonresident having an agent of record for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal.

[C51, §2004; R60, §3572; C73, §3249; C97, §4186; C24, 27, 31, 35, 39, §12234; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.5]

#### **646.6 Petition.**

The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of the plaintiff's estate and the extent of the plaintiff's interest therein, and that the defendant unlawfully keeps the plaintiff out of possession, and the damages, if any, which the plaintiff claims for withholding the

same; but if the plaintiff claims other damages than the rents and profits, the plaintiff shall state the facts constituting the cause thereof.

[R60, §3570; C73, §3250; C97, §4187; C24, 27, 31, 35, 39, §12235; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.6]

#### **646.7 Abstract of title.**

The plaintiff shall attach to the petition, and the defendant to the answer, if the party claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §12236; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.7]

Abstracts, [§354.11](#), 558.11

Court may order abstract, R.C.P. 1.1204

#### **646.8 Unwritten muniments of title — unrecorded conveyances.**

If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §12237; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.8]

#### **646.9 Evidence — abstract amended.**

No written evidence of title shall be introduced on the trial unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, or may be amended by the party setting it out.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §12238; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.9]

#### **646.10 Answer.**

The answer of the defendant, and each if more than one, must set forth what part of the land the defendant claims and what interest the defendant claims therein generally, and if as mere tenant, the name and residence of the landlord.

[C51, §2005; R60, §3573; C73, §3252; C97, §4189; C24, 27, 31, 35, 39, §12239; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.10]

#### **646.11 Landlord substituted.**

When it appears that the defendant is only a tenant, the landlord may be substituted by the service upon the landlord of original notice, or by the landlord's voluntary appearance, in which case the judgment shall be conclusive against the landlord.

[C51, §2003; R60, §3571, 3589; C73, §3253; C97, §4190; C24, 27, 31, 35, 39, §12240; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.11]

#### **646.12 Possession.**

When the defendant makes defense it is not necessary to prove the defendant in possession of the premises.

[C51, §2007; R60, §3575; C73, §3254; C97, §4191; C24, 27, 31, 35, 39, §12241; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.12]

#### **646.13 Purchase pending suit.**

Any person acquiring title to land or any interest therein, after commencement of an action under [this chapter](#) to recover the same, shall take subject to notice of and without prejudice to the rights of the parties to such action.

[R60, §3578; C73, §3255; C97, §4192; C24, 27, 31, 35, 39, §12242; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.13]

**646.14 Order to enter and survey.**

The court on motion, and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the land in controversy and make survey thereof for the purposes of the action.

[C51, §2021; R60, §3592; C73, §3256; C97, §4193; C24, 27, 31, 35, 39, §12243; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.14]

**646.15 Service.**

The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land.

[C51, §2022; R60, §3593; C73, §3257; C97, §4194; C24, 27, 31, 35, 39, §12244; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.15]

**646.16 Verdict — special.**

The verdict may specify the extent and quantity of the plaintiff's estate and the premises to which the plaintiff is entitled, with reasonable certainty, by metes and bounds and other sufficient description, according to the facts as proved.

[R60, §3594; C73, §3258; C97, §4195; C24, 27, 31, 35, 39, §12245; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.16]

**646.17 General verdict.**

A general verdict in favor of the plaintiff, without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition.

[R60, §3595; C73, §3259; C97, §4196; C24, 27, 31, 35, 39, §12246; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.17]

**646.18 Judgment for damages.**

If the interest of the plaintiff expires before the time in which the plaintiff could be put in possession, the plaintiff can obtain a judgment for damages only.

[C51, §2010; R60, §3579; C73, §3260; C97, §4197; C24, 27, 31, 35, 39, §12247; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.18]

**646.19 Use and occupation.**

The plaintiff cannot recover for the use and occupation of the premises for more than five years prior to the commencement of the action.

[C51, §2008; R60, §3576; C73, §3261; C97, §4198; C24, 27, 31, 35, 39, §12248; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.19]

**646.20 Improvements set off.**

When the plaintiff is entitled to damages for withholding or using or injuring the plaintiff's property, the defendant may set off the value of any permanent improvements made thereon to the extent of the damages, unless the defendant prefers to take advantage of the law for the benefit of occupying claimants.

[C51, §2023; R60, §3596; C73, §3262; C97, §4199; C24, 27, 31, 35, 39, §12249; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.20]

Occupying claimants, [chapter 560](#)

**646.21 Wanton aggression.**

In case of wanton aggression on the part of the defendant, the jury may award exemplary damages.

[C51, §2024; R60, §3597; C73, §3263; C97, §4200; C24, 27, 31, 35, 39, §12250; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.21]

**646.22 Tenant — extent of liability.**

A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of the tenant's possession.

[R60, §3598; C73, §3264; C97, §4201; C24, 27, 31, 35, 39, §12251; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.22]

**646.23 Growing crops — bond.**

If the defendant avers that the defendant has a crop sowed, planted, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed, which shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors.

[R60, §3599; C73, §3265; C97, §4202; C24, 27, 31, 35, 39, §12252; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.23]

Referred to in [§602.8102\(111\)](#)

**646.24 Writ of possession.**

When the plaintiff shows that the plaintiff is entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly.

[C51, §2009; R60, §3577; C73, §3266; C97, §4203; C24, 27, 31, 35, 39, §12253; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.24]

**646.25 Judgment for rent accruing.**

The plaintiff may have judgment for the rent or rental value of the premises which accrues after judgment and before delivery of possession, by motion in the court in which the judgment was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmance thereof.

[R60, §3600; C73, §3267; C97, §4204; C24, 27, 31, 35, 39, §12254; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.25]